

## Findings of Fact and Conclusions of Law

To: Stacey Mann  
City Clerk, City of Ladue, Missouri

We, David Bird and Susan Bird H/W [Petitioners], received a request for Findings of Fact and Conclusions of Law from the City of Ladue's Board of Administrative Review at a hearing of the Board on August 17, 2022, in the matter of Case 2022-01 Petition for Review. Petitioners now submit their Findings of Fact and Conclusions of Law, which is attached hereto and consists of 22 pages, not counting this page.

  
\_\_\_\_\_  
David Bird

  
\_\_\_\_\_  
Susan Bird

Signed this 19<sup>th</sup> day of September, 2022.



## Findings of Fact and Conclusions of Law

### SUMMARY

David and Susan Bird H/W [Petitioners] of 1 Robin Hill Lane, Ladue, Saint Louis County, Missouri, claim an unlawful or unconstitutional taking of property without compensation in the issuance of a Special Use Permit [SUP] by The City Council of The City of Ladue to Cingular Wireless, dba AT&T Mobility, on April 25, 2022, signed by Nancy Spewak, Mayor. (See Attachment 7)

The property interest claimed to be taken is *the value of our property*.

We believe the final action is unlawful or constitutes an unconstitutional taking because:

- i) The location of the utility pole is incorrectly listed as 62 South McKnight on multiple documents and material associated with the SUP application. (See Attachments 1, 2 and 3. The error on Attachment 3 is repeated on 11 pages). And on one document the address is missing, even though it is required for proper completion of the document. (See Attachment 4).
- ii) A color-coded map, purporting to show cell phone signal coverage in our area, was presented without a key, thus making it impossible to interpret or rebut. (Attachment 5).
- iii) The need for the pole/antenna has not been independently verified.
- iv) The SUP contains the erroneous statement "...will not have a detrimental effect on...the property values in the area". See attachment 6 for a few of the many articles that have been published on this topic.
- v) The SUP cites the "Ladue Vision 2040" Comprehensive Plan as a justification for approval of the SUP. A total of 469 respondents completed the Ladue Community Survey. 38% of respondents indicated they were "very dissatisfied or dissatisfied" with cell phone service. That is 178 people out of a total city population of 8,989 or 2% of the City's population. This is weak justification for the approval of the SUP. Further, we could find no indication that a statistical validation of the survey has been performed.
- vi) The location (address) of the respondents to the Ladue Community Survey who were dissatisfied with cell phone service was not reported.
- vii) Paragraph 5) of the SUP states that when the antenna is no longer used for its original purposes, the antenna must be removed, but there is no requirement to remove the pole or shorten it to the original height of the pole it replaced, nor is there a requirement to remove the radios, equipment and container(s) mounted on the side of the pole.
- viii) The SUP states that if the antenna is no longer used for its original purpose and is not removed, then the city may remove it and place a lien on itself for the cost of removal.
- ix) The Middle Class Tax Relief and Job Creation Act of 2012 contains a provision, in Section 6409(a), which requires state and local governments to approve "modifications" of wireless facilities that do not "substantially change" their physical dimensions. Thus, we are prevented from challenging additions to the pole's height and attached equipment.

The cumulative effect of the foregoing is to have denied us due process in the City Council's decision to approve the SUP.

No compensation has been offered.

We will address three items of fact and law in this document:

- I The lack of due process used in the issuance of the SUP
- II The taking of property
- III The lack of compensation

## I The lack of due process used in the issuance of the SUP

The Fifth Amendment to the United States Constitution says that no one shall be “deprived of life, liberty or property without due process of law.” These words have as their central promise an assurance that all levels of American government must operate within the law and provide fair procedures. [1]

A. The “Letter of Consent – Authorization to Submit Permit Applications” in which Union Electric d/b/a Ameren Missouri grants permission to Cingular Wireless dba AT&T Mobility to install a small wireless facility, lists the address of the property as 62 South McKnight Rd. No permission was granted for installation at 1 Robin Hill Ln.

B. City of Ladue ordinance requires applicants for Wireless Communication Facilities to provide an attestation that the proposed Small Wireless Facility complies with volumetric limitations. The “Attestation Form for Small Wireless Facilities” (Attachment 4) is incomplete, even though the signer certifies that the information is complete. The space provided on the form for the date the application was submitted and the address for the proposed installation are both blank.

C. Additional documentation submitted by the applicant for the SUP lists 62 South McKnight as the address for the proposed antenna/pole. (See attachments 1, 2 and 3.) The error on Attachment 3 is repeated on 11 pages.

D. A color-coded map (Attachment 5), submitted by the applicant for the SUP and purporting to show coverage in the area around South McKnight and Robin Hill Lane, was submitted without a key, thus making it impossible to interpret and rebut. Petitioners have conducted their own measurement of cell phone coverage in this area by placing and receiving cell phone calls in front of every house on Robin Hill Lane, every house from the Robin Hill Ln/South McKnight intersection northward to Ladue Road and southward along McKnight for an equivalent distance. In all locations calls were made and received with no problem and signal strength was strong.

E. The need for a Small Wireless Facility at this location was not addressed by the Advisory Committee on Cell Service and is disputed by Ladue residents  
Excerpts of testimony, at the Administrative Review hearing on August 17, 2022, from Charlie Hiemenz, Chair of the City of Ladue Advisory Committee on Cell Service:

QUESTIONS BY MR. BIRD:

Q. We have seen this map provided by AT&T purporting to show the coverage in that area. Did your group engage any let's say outside independent engineering studies that actually measured what the cell phone coverage is in that area?

A. We didn't.

And later in that same testimony:

My question is: You did not engage an outside neutral third-party to supply information about coverage in that area; is that correct?

A. We never looked at any individual site.

[1] A series of Supreme Court decisions found that the Due Process Clause is applicable to the states.  
[https://www.law.cornell.edu/wex/due\\_process](https://www.law.cornell.edu/wex/due_process) Legal Information Institute, Cornell Law School.

Excerpts of testimony at the Administrative Review hearing on August 17, 2022, from Ladue residents:

Valerie Anderson. I'm at 2 Robin Hill Lane.

I travel that way every single day. Actually with my cell phone on talking to my folks, never dropping a call.

And where I live I get perfect coverage. I work from home all the time. Upstairs, downstairs, inside, outside, in my car, never have any problem whatsoever.

I called the police from 22 McKnight, which is right very close to 62 McKnight ironically, very close. And I called the police. There was an accident and the gentleman was intoxicated, and please arrive right away. Never dropped a call. That was mentioned for safety purposes. No one had any trouble whatsoever receiving that call, arriving within 2 minutes. And that is in the darkest of dark area right there pretty close to 62 McKnight.

I'm Peggy Ward. I too was born in Ladue.

The number one goal that I saw in all the paperwork that we were sent from the City was preserve and enhance the City life community character of Ladue.

I drive McKnight Road every single day. So when I go to Highway 40, I take my son to school every day down McKnight Road. And I don't believe the gap coverage stuff that they are claiming. There is no coverage problem. It used to be, believe me. I grew up here and it was horrible. But not anymore. But that is not an excuse to put up an eyesore that is going to ruin the pastoral character of one of our most beautiful streets that has some of the most historical homes and most desirable real estate in Ladue.

My name is John Brunner.

I live at 5 Ridgewood, which is two or three streets down from Robin Hill.

we are telling you the cellphone coverage is fine.

We are telling you don't want this.

We don't want it. It's massive, ugly, and it's very sort of disheartening to have our elected officials working against the people and side in special interest.

ANTHONY BOMMARITO

And I have answered every call on both phones for a lot of years, and I have never, ever missed one. I don't know what you people are talking about missing calls.

And every call I have received I want to let you know I have returned. So I have never, ever had any problem with the phone system.

BOARD MEMBER WELSH: Can you please state your name and address for the record?

MR. BOMMARITO: My name is Anthony Bommarito. I live at Number 7 McKnight Lane.

SALLY KRAMER

Now, if we are just a little patient we can have communication by satellite. Isn't that wonderful? And nobody has an ugly pole, and no one has to argue  
And so congratulations, everybody, we don't have to have this damn tower.

My name is Lauren Brunner. I live at 5 Ridgewood Road, which is one street south of Robin Hill.

Preserving the landscape beauty and appeal of living in Ladue should be the utmost importance. Especially during this time where other cities are being bombarded with

ugly cell towers and antennas on every lamp post.

I request that the Board in Ladue refuse the permit for installation.

F. The SUP cites the "Ladue Vision 2040" Comprehensive Plan as a justification for approval of the SUP. A total of 469 respondents completed the Ladue Community Survey. 38% of respondents indicated they were "very dissatisfied or dissatisfied" with cell phone service. That is 178 people out of a total city population of 8,989 or 2% of the City's population. This is weak justification for the approval of the SUP.

Petitioners could find no statistical validation of the survey.

The addresses of the respondents who were "very dissatisfied or dissatisfied" was not disclosed. This would have been very useful information when deciding where improved coverage was needed. Unfortunately, it was either not captured or not reported.

G. From Ladue's Wireless Communications Regulations, A. Purpose and Intent, Paragraph 4, we find the following: "Ensure that towers and other wireless communications facilities are soundly and carefully designed, constructed, installed, and maintained, and removed when no longer in use". However, Paragraph 5) of the SUP states that when the antenna is no longer used for its original purposes, the antenna must be removed, but there is no requirement to remove the pole or shorten it to the original height of the pole it replaced, nor is there a requirement to remove the radios, equipment and container(s) mounted on the side of the pole. Additionally, The SUP states (see paragraph 6) that if the antenna is no longer used for its original purpose and is not removed, then the City may remove it and place a lien on itself for the cost of removal; this seems absurd.



## II The taking of property

The property interest that will be taken with the installation of the pole/antenna is *the value of our property*. The dollar amount of reduction in value can be calculated by multiplying:

- a) the percentage of reduction in value that will occur after the installation of the 77 feet tall utility pole with a cell phone antenna and attachments  
times
- b) the value of the property before installation of the 77 feet tall utility pole with a cell phone antenna and attachments.

Petitioners contacted a licensed property appraiser in an attempt to determine part a) above. The appraiser declined to express an opinion before the pole/antenna is installed. As the proposed antenna/pole has not yet been installed and the reduction in value has not yet occurred, it is not possible to specify a dollar amount at this time.

There are numerous articles that address the reduction in property value that occurs near wireless communications facilities. A few of these articles follow, more are in Attachment 6.

[“Impact of Communication Towers and Equipment on Nearby Property Values”](#) prepared by Burgoyne Appraisal Company, March 7, 2017

“In 32 years of experience as a Real Estate Appraiser specializing in detrimental conditions, takings, adverse impacts and right-of-way, I have found that aesthetics (or rather the adverse impact on aesthetics) of externalities routinely has the largest impact on property values. As a result, proximity to towers of all types (cell, wind turbine, and electric transmission) has an impact on property values. The same is true with all sorts of surface installations such as pump stations and communication equipment boxes. This would apply to new small cell and DAS equipment, although again, one would expect that the less intrusive the facility, the less significant the impact. Small cell and DAS installations can be unsightly, bulky, inconsistent, and even noisy.”

[The Cost of Convenience: Estimating the Impact of Communication Antennas on Residential Property Values](#) (*Land Economics*, Feb. 2016)

“Re a study on property in Kentucky- “The best estimate of the impact is that a property with a visible antenna located 1,000 feet away sells for 1.82% (\$3,342) less than a similar property located 4,500 feet away. The aggregate impact is \$10.0 million for properties located within 1,000 feet”

[“Examining invisible urban pollution and its effect on real estate value in New York City”](#) – by William Gati in New York Real Estate Journal September 2017

“Understanding EMF values of business and residential locations is relatively new for the real estate industry. Cell phone towers bring extra tax revenue and better reception to a section of the city, but many are skeptical because of potential health risks and the impact on property values. Increasing numbers of people don’t want to live near cell towers. In some areas with new towers, property values have decreased by up to 20%.”

“Cell Tower Antennas Problematic for Buyers” published in REALTOR® Magazine:

An overwhelming 94 percent of home buyers and renters surveyed by the National Institute for Science, Law & Public Policy (NISLAPP) say they are less interested and would pay less for a property located near a cell tower or antenna.

The NISLAPP survey echoes the findings of a study by Sandy Bond of the New Zealand Property Institute and past president of the Pacific Rim Real Estate Society (PRRES). “The Impact of Cell Phone Towers on House Prices in Residential Neighborhoods,” which was published in The Appraisal Journal in 2006, found that buyers would pay as much as 20 percent less for a property near a cell tower or antenna.

Attachment 6 is from testimony submitted to the Montgomery County, Maryland, County Council showing property value will drop with installation of wireless cells. The last four pages of this document are not reproduced here, as they deal with health issues associated with small cell radiation exposure and we are prohibited from considering such issues.

[https://montgomerycountymd.gov/cable/Resources/Files/Towers/documents/Mobilitie%20Reply%20Comments%20-%20Smart%20Communities%20Siting%20Coalition%20\(2017\).pdf](https://montgomerycountymd.gov/cable/Resources/Files/Towers/documents/Mobilitie%20Reply%20Comments%20-%20Smart%20Communities%20Siting%20Coalition%20(2017).pdf)



### III The lack of compensation

No compensation has been offered.

## Attachment 1

Submitted by applicant for SUP

### Ladue Small Cell Forecasted Construction Schedule

**LADUE 004A**

**62 South McKnight**

Construction Start Date: 2022 – date TBD

Construction Complete: 2022 – date TBD

On Air Date: 2022 – date TBD

Attachment 2  
Submitted by applicant for SUP



at&t

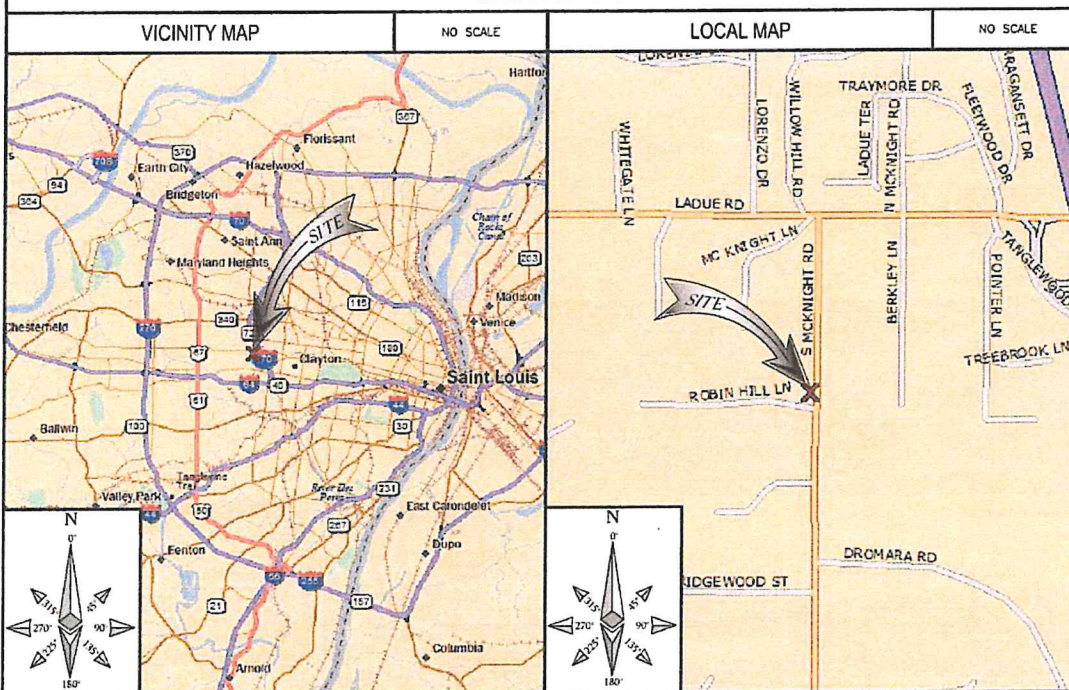
CRAN\_RKSL\_LADUE\_004A

FA #: 15461576

NODE USID #: 311822

**62 SOUTH MCKNIGHT RD**  
**SAINT LOUIS, MO 63124**

LOCATION MAPS



| SHEET NO. | SHE  |
|-----------|------|
| T-1       | TITL |
| A-1       | OVER |
| A-2       | POLI |
| A-3       | EQU  |
| A-4       | ANTE |
| A-5       | ELEC |
| E-1       | ELEC |
| G-1       | POLI |
| GN-1      | LEGE |
| GN-2      | GENI |
| GN-3      | GENI |

| QTY | EQUIP |
|-----|-------|
| 1   | GAM   |
| 1   | NOKIA |
| 1   | NOKIA |
| 2   | DELTA |

11"x17" PLO

SUBCONTRACT  
THE JOB SITE &  
BEFC



DRIVING DIRECTIONS

DIRECTIONS FROM AT&T OFFICE:

HEAD WEST ON HISTORIC U.S. 66 E/MANCHESTER RD. GO STRAIGHT ON TO I-270 RAMP, TAKE EXIT 12, KEEP RIGHT ON TO I-64 E RAMP, TAKE EXIT 30, KEEP RIGHT ON TO S MCKNIGHT RD RAMP, TURN LEFT ONTO S MCKNIGHT RD, SITE WILL BE ON THE LEFT.

## A



6800 W 115TH ST.  
SUITE 2292  
OVERLAND PARK, KS 66211  
(913) 458-2000

CHECKED BY: AM

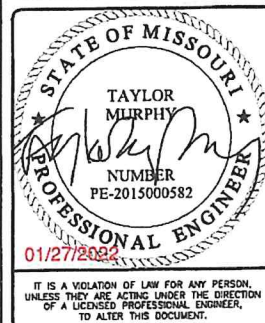
## NO SCALE

| QTY | EQUIPMENT DESCRIPTION           | DIMENSIONS      |                    |                       | VOLUME (FT <sup>3</sup> ) |
|-----|---------------------------------|-----------------|--------------------|-----------------------|---------------------------|
|     |                                 | HEIGHT (INCHES) | WIDTH/DIA (INCHES) | DEPTH/LENGTH (INCHES) |                           |
| 1   | CANIMA NU D0YZ9X360F14          | 24.00           | 14.40              |                       | 2.26                      |
| 1   | NOKIA AIRSCALE B25/66 AHLBBA    | 22.05           | 12.13              | 6.97                  | 1.08                      |
| 1   | NOKIA AIRSCALE B12/14/29 AHLBBA | 24.01           | 14.09              | 7.83                  | 1.53                      |
| 2   | DELTA ADVANTAGE 2KW RECTIFIER   | 16.50           | 12.30              | 4.70                  | 1.10                      |
|     |                                 |                 |                    | <b>TOTAL</b>          | <b>5.98</b>               |

SUBCONTRACTOR SHALL VERIFY ALL PLANS & EXISTING DIMENSIONS & CONDITIONS ON THE JOB SITE & SHALL IMMEDIATELY NOTIFY THE ENGINEER IN WRITING OF ANY DISCREPANCIES BEFORE PROCEEDING WITH THE WORK OR BE RESPONSIBLE FOR SAME



Know what's below.  
Call before you dig.



T-1



Attachment 4  
Submitted by applicant for SUP

**ATTESTATION FORM FOR SMALL WIRELESS FACILITIES**

I, Joe Markus, as the Applicant—or as authorized by the Applicant to sign on his/her/its behalf—applying to place wireless Facilities within the City's Rights-of-Way (the "Applicant"), hereby certify and attest that the volume and surface area (the "Volumetric Requirements") of the wireless Facilities proposed in the application submitted to the City of Ladue, Missouri on (the "Application") which are proposed to be located at the following address(es):

| <b>LIMITED FORMULAS (listed as a courtesy and may not describe all possible applicable formulas)</b>   |  |                      |                     |                     |             |             |          |         |         |        |        |          |          |          |         |         |           |          |          |         |         |          |                      |                      |                     |                     |
|--|--|----------------------|---------------------|---------------------|-------------|-------------|----------|---------|---------|--------|--------|----------|----------|----------|---------|---------|-----------|----------|----------|---------|---------|----------|----------------------|----------------------|---------------------|---------------------|
| <b>Volume of a rectangular prism</b> = Length * Width * Height   | <b>Surface Area of a rectangular prism</b> = 2 * (Length * Width) + 2 * (Height * Width) + 2 * (Length * Height) |                      |                     |                     |             |             |          |         |         |        |        |          |          |          |         |         |           |          |          |         |         |          |                      |                      |                     |                     |
| <b>Volume of a cylinder</b> = (Area of Base of cylinder) * Height  | <b>Surface Area of a cylinder</b> = 2 * $\pi$ * (radius) <sup>2</sup> + 2 * $\pi$ * (radius * Height)            |                      |                     |                     |             |             |          |         |         |        |        |          |          |          |         |         |           |          |          |         |         |          |                      |                      |                     |                     |
| <input checked="" type="checkbox"/> <b>Meets the Volumetric Requirements of the City's Code</b><br>(Volumes and surface areas exclude electric meters, power switch, and concealment devices as per state code.)   |  |                      |                     |                     |             |             |          |         |         |        |        |          |          |          |         |         |           |          |          |         |         |          |                      |                      |                     |                     |
| <b>1. Dimensions of proposed Antenna (in inches and decimals):</b> <ul style="list-style-type: none"><li>• Rough Shape: Cylinder</li><li>• Diameter: 14.4 in</li><li>• Height: 24.0 in</li><li>• Volume: 2.26 ft<sup>3</sup></li></ul> <b>Dimensions of proposed Associated Equipment (in inches and decimals):</b> <table style="width: 100%; border-collapse: collapse;"><thead><tr><th></th><th style="text-align: center;">Radio 1</th><th style="text-align: center;">Radio 2</th><th style="text-align: center;">Rectifier 1</th><th style="text-align: center;">Rectifier 2</th></tr></thead><tbody><tr><td>• Depth:</td><td style="text-align: center;">7.83 in</td><td style="text-align: center;">5.87 in</td><td style="text-align: center;">3.7 in</td><td style="text-align: center;">3.7 in</td></tr><tr><td>• Width:</td><td style="text-align: center;">14.09 in</td><td style="text-align: center;">12.13 in</td><td style="text-align: center;">11.3 in</td><td style="text-align: center;">11.3 in</td></tr><tr><td>• Height:</td><td style="text-align: center;">24.01 in</td><td style="text-align: center;">22.04 in</td><td style="text-align: center;">15.5 in</td><td style="text-align: center;">15.5 in</td></tr><tr><td>• Volume</td><td style="text-align: center;">2.07 ft<sup>3</sup></td><td style="text-align: center;">0.91 ft<sup>3</sup></td><td style="text-align: center;">.38 ft<sup>3</sup></td><td style="text-align: center;">.38 ft<sup>3</sup></td></tr></tbody></table> |  |                      | Radio 1             | Radio 2             | Rectifier 1 | Rectifier 2 | • Depth: | 7.83 in | 5.87 in | 3.7 in | 3.7 in | • Width: | 14.09 in | 12.13 in | 11.3 in | 11.3 in | • Height: | 24.01 in | 22.04 in | 15.5 in | 15.5 in | • Volume | 2.07 ft <sup>3</sup> | 0.91 ft <sup>3</sup> | .38 ft <sup>3</sup> | .38 ft <sup>3</sup> |
|  | Radio 1  | Radio 2              | Rectifier 1         | Rectifier 2         |             |             |          |         |         |        |        |          |          |          |         |         |           |          |          |         |         |          |                      |                      |                     |                     |
| • Depth:   | 7.83 in  | 5.87 in              | 3.7 in              | 3.7 in              |             |             |          |         |         |        |        |          |          |          |         |         |           |          |          |         |         |          |                      |                      |                     |                     |
| • Width:   | 14.09 in   | 12.13 in             | 11.3 in             | 11.3 in             |             |             |          |         |         |        |        |          |          |          |         |         |           |          |          |         |         |          |                      |                      |                     |                     |
| • Height:  | 24.01 in   | 22.04 in             | 15.5 in             | 15.5 in             |             |             |          |         |         |        |        |          |          |          |         |         |           |          |          |         |         |          |                      |                      |                     |                     |
| • Volume   | 2.07 ft <sup>3</sup>   | 0.91 ft <sup>3</sup> | .38 ft <sup>3</sup> | .38 ft <sup>3</sup> |             |             |          |         |         |        |        |          |          |          |         |         |           |          |          |         |         |          |                      |                      |                     |                     |
| <b>2. Volumes:</b><br>Volume of Antenna: 2.26 ft <sup>3</sup><br><br>Volume of Associated Equipment: 3.74 ft <sup>3</sup><br><br>Total Volume (a + b): 6.0 ft <sup>3</sup>   |  |                      |                     |                     |             |             |          |         |         |        |        |          |          |          |         |         |           |          |          |         |         |          |                      |                      |                     |                     |

I, Joe Markus, hereby certify and attest that the information contained herein and/or attached hereto is true, correct, and complete to the best of my knowledge, information, and belief.

  
Signature of Applicant/Authorized Representative

11-10-21  
Date

Joe Markus  
Print Name

STATE OF MISSOURI )  
St. Charles COUNTY ) SS

On this 11th day of November, 2021, before me personally appeared Joe Markus, to me known to me to be the person described in and who executed the foregoing instrument, and acknowledged that [he/she/they] executed the same as [his/her/their] free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid, on the day and year first above written.

  
Notary Public

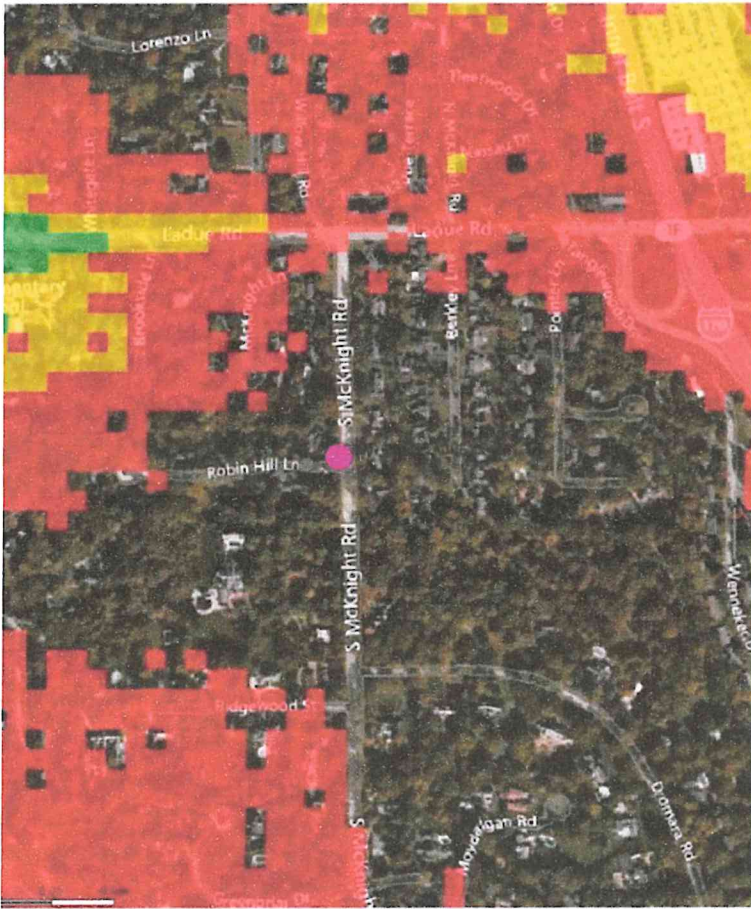
My Commission Expires: July 18, 2025

|  |
|--|
| <b>ANDREA NICHOLSON</b><br>Notary Public - Notary Seal<br>STATE OF MISSOURI<br>St. Charles County<br>My Commission Expires: July 18, 2025<br>Commission # 21999569 |
|--|

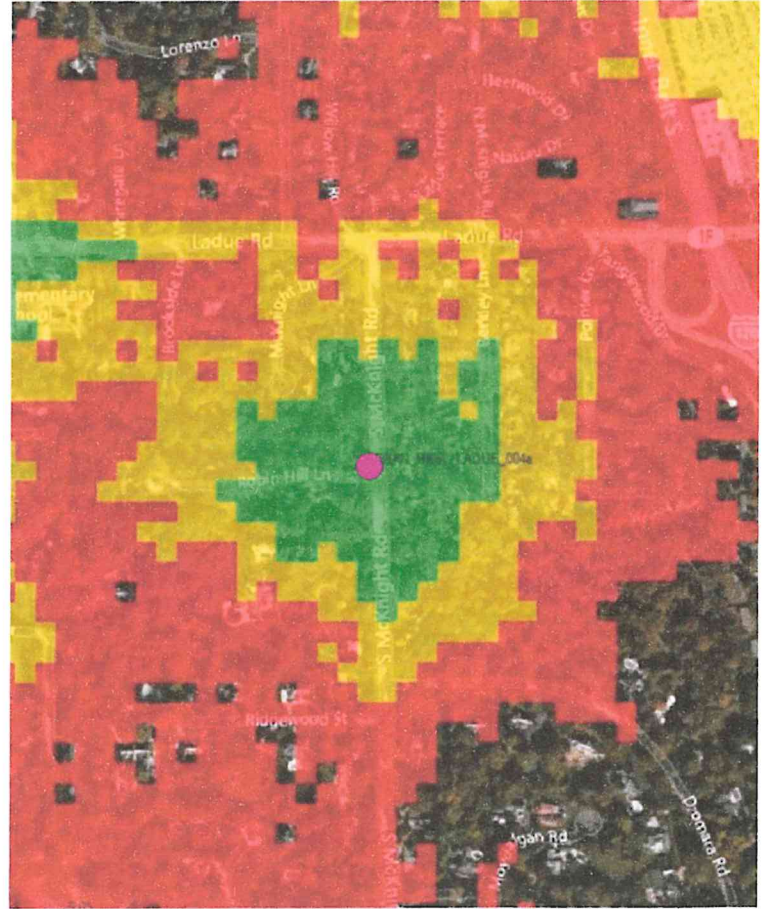


Attachment 5  
Submitted by applicant for SUP

**ADUE 004A** - Ladue right-of-way, across from 62 S. McKnight Rd.



Current coverage area around S. McKnight and Robin Hill Ln.



Future coverage after installation of small cell.

## Attachment 6

### Testimony Submitted to the Montgomery County Council Showing Property Value Will Drop from ZTA 22-01

by Zena Carmel-Jessup, Silver Spring Maryland



Research referenced by Montgomery County itself shows loss of property value from wireless antenna facilities in front of homes! Cell antennas 30 feet from homes will impact the property value of homes sitting right in front of the tower!

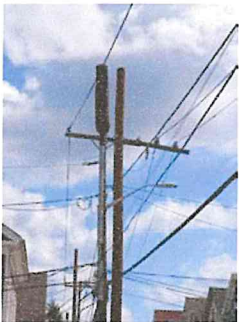


*(Content taken from Environmental Health Trust [Property Value Devaluation from Cell Antennas](#))*



**Montgomery County Own Legal filings state property values will drop from small cells.**

**"many deployments of small cells could affect property values, with significant potential effect..."** - Legal filing by Montgomery County Maryland and other Cities, 4/7/2017, Docket No. 16-421, [Reply Comments of Smart Communities Siting Coalition which includes Montgomery County](#)



**"Considering that the Smart Communities' prior filings show that the addition of facilities of this size diminish property values, it is strange for the Commission to assume that approval can be granted in the regulatory blink of an eye....A good example lies in the Commission's discussion of undergrounding.<sup>62</sup> The Commission at once appears to recognize that communities spend millions of dollars on undergrounding projects, and that allowing poles to go up in areas where poles have been taken down has significant impacts on aesthetics (not to mention property values)."**

- [Ex Parte Submission from lawyers representing Montgomery County, Letter to Ms. Marlene H. Dortch, Secretary Federal Communications Commission September 19, 2018](#)



**Realtors state property values will drop**

[Realtor Magazine: Cell Towers, Antennas Problematic for Buyers](#) "An overwhelming 94 percent of home buyers and renters surveyed by the National Institute for Science, Law & Public Policy





(NISLAPP) say they are less interested and would pay less for a property located near a cell tower or antenna. What's more, of the 1,000 survey respondents, 79 percent said that under no circumstances would they ever purchase or rent a property within a few blocks of a cell tower or antennas, and almost 90 percent said they were concerned about the increasing number of cell towers and antennas in their residential neighborhood."

National Association of REALTORS Magazine ["Homeowners Complain About 'Ugly' 5G Boxes in Their Yards"](#) January 27, 2021

"Wireless companies are installing boxes in front of homes as part of their 5G network rollout. But homeowners aren't pleased, calling the chest freezer-sized boxes a big eyesore in their front yards."

[A Field Guide to Cell Towers, The National Association of Realtors](#)

This field guide lists numerous publications indicating wildlife effects as well as human health risks and impacts to property values from the aesthetics and perceived health implications.

The California Association of Realtors' Property Sellers

Questionnaire specifically lists "cell towers" on the disclosure form for sellers of real estate. The seller must note "neighborhood noise, nuisance or other problems from.." and includes cell towers and high voltage transmission lines on the long list problems. [Click here to see the California Association of Realtors' Property Sellers Questionnaire](#) (p. 3-4 under K. Neighborhood)

### **Studies Show Cell Antennas Near Homes Drop Property Values from 7% to 20%**

[The Impact of Cell Phone Towers on House Prices in Residential Neighborhoods](#) study found that buyers would pay as much as 20 percent less, as determined at that time by an opinion survey in addition to a sales price analysis.

[The Disamenity Value of Cellular Phone Towers on Home Prices in Savannah, Georgia](#) (The Empirical Economics Letters, Aug. 2019) found proximity to cell phone towers can reduce selling price up to 7.6%.

### **Numerous articles state property value will drop**

"Cellphone towers bring extra tax revenue and better reception to a section of the city, but many are skeptical because of the potential





(b) A small cell attached at the top of a streetlight pole (Heilman, 2018).



Fig. 3. Street view on the Thompson street with view of the mobile phone tower antenna pointing out with a circle near the low perimeter of the antenna, where customers create the potential of low range.



health risks and the impact on property values. Increasing numbers of people don't want to live near cell towers. In some areas with new towers, **property values have decreased by up to 20%.**

-National Business Post: [Your new neighbor, a cell tower, may impact the value of your home](#) 2022

- A recent survey by the National Institute for Science, Law & Public Policy (NISLAPP) found **that 94 percent of homebuyers are "less interested and would pay less" for a property located near a cell tower or antenna.**

-["Do neighborhood cell towers impact property values?"](#)

Pennsylvania Association of Realtors

- **"Properties that are approximately close to the tower will suffer substantial degradation to their value** based on the nature of the unusual feature in the residential neighborhood." - [Appraiser: Cell Tower Will Affect Property Values](#)

- "While most states do not require disclosure of neighborhood nuisances, such as cell towers or noisy neighbors, a few states do, **and more are likely to in the future.**"- [Real Estate Q&A: Is There an Obligation to Tell Buyers About Nearby Cell Phone Tower?](#) (RISMedia, Apr. 26, 2021)

- "Understanding EMF values of business and residential locations is relatively new for the real estate industry. Cell phone towers bring extra tax revenue and better reception to a section of the city, but many are skeptical because of potential health risks and the impact on property values. Increasing numbers of people don't want to live near cell towers. In some areas with new towers, property values have decreased by up to 20%."- "Examining invisible urban pollution and its effect on real estate value in New York City" – by William Gati in New York Real Estate Journal September 2017

"In 32 years of experience as a Real Estate Appraiser specializing in detrimental conditions, takings, adverse impacts and right-of-way, I have found that aesthetics (or rather the adverse impact on aesthetics) of externalities routinely has the largest impact on property values. As a result, proximity to towers of all types (cell, wind turbine, and electric transmission) has an impact on property values. The same is true with all sorts of surface installations such as pump stations and communication equipment boxes. This would apply to new small cell and DAS equipment,





although again, one would expect that the less intrusive the facility, the less significant the impact. Small cell and DAS installations can be unsightly, bulky, inconsistent, and even noisy.”- [“Impact of Communication Towers and Equipment on Nearby Property Values”](#) prepared by Burgoyne Appraisal Company, March 7, 2017

“As we expected, the results clearly show that cell phone towers negatively affect adjacent property values, although in a relatively modest way. The negative impact decreases with the distance to the tower with by far the largest effect occurring within the first 200 m. Furthermore, the research confirms that all types of towers exert similar impact on property values despite various towers having different visual effects which demonstrate that the residents’ concern is more on health impacts than visual effects.”- [The Impact of Cell Phone Towers on House Prices: Evidence from Brisbane, Australia](#) (Environmental Economics and Policy Studies, Jan. 1, 2018)

“On average, the potential external cost of a wireless tower is approximately \$4132 per residential property, which corresponds to a negative price effect of 2.65%. The negative price impact of 9.78% is much more severe for properties within visible range of a tower compared to those not within visible range of a tower. This negative impact vanishes as radii distances exceed 0.72 km.” [Wireless Towers and Home Values: An Alternative Valuation Approach Using a Spatial Econometric Analysis](#) (Journal of Real Estate Finance & Economics, May 1, 2018)

- [The effect of distance to cell phone towers on house prices](#) S Bond, Appraisal Journal, Fall 2007, Source, Appraisal Journal ([Found on page 22](#))
- [Using GIS to Measure the Impact of Distance to Cell Phone Towers on House Prices in Florida](#)
- [Florida State University Law Review Volume 24 | Issue 1 Article 5 1996 The Power Line Dilemma: Compensation for Diminished Property Value Caused by Fear of Electromagnetic Fields](#)
- [New Zealand Ministry for the Environment, “Appendix 5: The Impact of Cellphone Towers on Property Values”](#) Source: New Zealand Ministry for the Environment website
- [Powers, turbines and transmission lines impacts on property value edited by Sally Bond Sally Sims and Peter Dent, 2014](#)

The Impact of Cell Phone Towers on House Prices in Residential Neighborhoods, was published in The Appraisal Journal of the Appraisal Institute in 2006. The Appraisal Institute is the largest global professional organization for appraisers with 91 chapters.





The study indicated that:

Homebuyers would pay from 10%–19% less to over 20% less for a property if it were in close proximity to a cell phone base station.

The 'opinion' survey results were then confirmed by a market sales analysis.

The results of the sales analysis showed prices of properties were reduced by around 21% after a cell phone base station was built in the neighborhood."

Jim Turner, Esq., Chairman of the National Institute for Science, Law and Public Policy, says,

"The results of the 2014 NISLAPP survey suggest there is now high awareness about problems from cell towers and antennas, including among people who have never experienced cognitive or physical effects from the radiation. A study of real estate sales prices would be beneficial at this time in the United States to determine what discounts homebuyers are currently placing on properties near cell towers and antennas."

The Appraisal Journal study added,

"Even buyers who believe that there are no adverse health effects from cell phone base stations, knowing that other potential buyers might think the reverse, will probably seek a price discount for a property located near a cell phone base station."

James S. Turner, Esq., Chairman of the National Institute for Science, Law & Public Policy and Partner, Swankin & Turner in Washington, D.C., says,

"The recent NISLAPP survey suggests there is now a high level of awareness about potential risks from cell towers and antennas. In addition, the survey indicates respondents believe they have personally experienced cognitive (57%) or physical (63%) effects from radiofrequency radiation from towers, antennas or other radiating devices, such as cell phones, routers, smart meters and other consumer electronics. Almost 90% are concerned about the increasing number of cell towers and antennas generally. A study of real estate sales prices would be beneficial at this time in the United States to determine what discounts homebuyers are currently placing on properties near cell towers and antennas."

## Attachment 7

### Special Use Permit for ZPC 22-03

#### City of Ladue, Missouri

#### Issued to Cingular Wireless, dba AT&T Mobility

#### For a utility pole location on McKnight Road, near 1 Robin Hill

WHEREAS, Cingular Wireless, dba AT&T Mobility submitted an application for a Small Wireless Facility, as defined by Section VIII of the Ladue Zoning Ordinance (Ordinance 1175) to be placed on a replacement Ameren utility pole, with a total height of 77 feet in the right-of-way of McKnight Road in the B residential zoning district, which is owned and maintained by the City of Ladue; and

WHEREAS, Small Wireless Facilities and new, modified, and replacement utility poles are authorized in all zoning districts in the City in compliance with and according to Section VIII of the Ladue Zoning Ordinance (Ordinance 1175); and

WHEREAS, this proposed replacement utility pole is more than 15 feet taller than any utility pole within  $\frac{1}{4}$  mile of the proposed location and, therefore, requires a Special Use Permit, according to Section VIII of the Ladue Zoning Ordinance (Ordinance 1175); and

WHEREAS, the Zoning and Planning Commission held a public meeting on March 23, 2022 to discuss the application and hear public comment regarding this Special Use Permit; and

WHEREAS, the applicant must secure a waiver due to the fact that this pole exceeds 70 feet in height, with such waiver to be approved upon "good cause shown" by the applicant; and

WHEREAS, the applicant has demonstrated that the topography and tree cover in the City of Ladue coupled with the scarcity of cell towers in the area, requires that this pole exceed 70 feet in height in order to improve cell coverage; and

WHEREAS, the Zoning and Planning Commission considered the effect of the requested Special Use Permit on the health, safety, morals, and the general welfare of the residents, in accordance with Section VII –C of Ordinance 1175, however, due to a difference of opinion, the Zoning and Planning Commission was not able to provide a clear recommendation regarding this application at their meeting on March 23, 2022, and decided by a vote of four (4) in favor and two (2) opposed to send this application to City Council without a recommendation; and

WHEREAS, the City Council held a duly noticed public hearing to hear further comments and discussion regarding this application on April 25, 2022; and

WHEREAS, the proposed location has very tall trees, some measuring around 80' and the antenna will be fairly well covered by the foliage of the same in the summer, and the replacement utility pole is not out of character in the City as new Ameren poles being erected in the City are between 65-75' tall; and

WHEREAS, during the City's recent development of the "Ladue Vision 2040" Comprehensive Plan, one of the biggest concerns expressed by residents was the need for reliable cell coverage and broadband service, which are identified by the Plan as "critical quality of life amenities" that can impact home values "in areas of the community that have poor access to cell and internet services", as reflected in the text under Strategy 6.1 of the Plan; and

WHEREAS, all City of Ladue ordinance procedures for approval of a Special Use Permit for Cingular Wireless, dba AT&T Mobility have been followed, pursuant to Section VII of Ordinance 1175; and

WHEREAS, the applicant has demonstrated such good cause for a height waiver including that the topography and tree cover in the City of Ladue coupled with the scarcity of cell towers in the area, requires that this pole exceed 70 feet in height in order to improve cell coverage; and

WHEREAS, after the public hearing and after giving consideration to the criteria for issuance of a Special Use Permit (Section VII – C of Ordinance 1175) and the conditions recommended by the City Planner, the City Council has determined that with the recommended conditions, this application will not have a detrimental effect on the health, safety, morals, or the general welfare of the residents, including the effect on

- 1) Traffic in the streets;
- 2) Fire hazards;
- 3) Overcrowding of land or undue concentration of people;
- 4) Fire, police, and utility services;
- 5) Municipal expenditures;
- 6) The character of the district, and property values in the area; and
- 7) The general suitability of the property in question for the proposed use;

and is in compliance with the requirements for installation of communication antenna in accordance with Section VIII. And, therefore, finds that this Special Use Permit for Cingular Wireless, dba AT&T Mobility, with conditions, is in compliance with all City ordinances and should be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LADUE that the Special Use Permit with waiver of height restrictions for ZPC 22-03 on McKnight Road shall be issued to Cingular Wireless, dba AT&T Mobility with the following conditions:

- 1) The communication antennas shall be constructed, operated and maintained based on the plans for such antennas approved by the City on April 25, 2022.
- 2) The City must be in receipt of a structural report with an engineer's certification that the pole can support the proposed equipment prior to issuance of any building permit or construction of the same.

- 3) All equipment necessary for the operation of the communication antenna shall be attached to the pole in the most inconspicuous location possible (i.e., facing away from the road or facing away from oncoming traffic).
- 4) Equipment shall be the same color as the Utility Pole and maintained in good condition.
- 5) In accordance with Section IIV.H of Ordinance 1175, when the communication antenna shall no longer be used for their original communications purpose, the owner of the communications antenna or the last lessee, licensee or user thereof shall be obligated, jointly and severally, at their expense to dismantle and remove promptly such antenna from the site. If applicable, the licensed telecommunications user of such communication antenna shall provide the city with a copy of the notice to the FCC of intent to cease operations thereon and shall have ninety (90) days from cessation of the operations to complete the dismantling and removal of its equipment from the site.
- 6) In accordance with Section VII.H of Ordinance 1175, if the communication antenna is not removed based on the requirements of condition 5 above, the City reserves the right at any time thereafter and after giving thirty (30) days written notice to the interested parties, to enter the property and remove the communication antenna, and to charge the costs to the last lessee, licensee or user thereof and to place a lien in the amount of the costs against the property of the owner of the site.
- 7) In accordance with Section 90.283.(b)(3), the granting of this Special Use Permit for installation within the City's rights-of-way shall not operate as an express or implied representation or warranty regarding the City's rights to authorize the installation or construction of facilities on any segment of the rights-of-way, and the City shall not be liable for damages therefrom. It is applicant's sole responsibility for making all such determinations and ensure the proposed location is within the City's rights-of-way in advance of construction or installation. The City has no authority and is not granting the right to install any wireless communication facilities on private property.
- 8) The construction/installation, operation and maintenance of the communication antenna shall comply with all applicable portions of the City's zoning ordinance, building code, Rights-of-Way Management Code, and other applicable ordinances as well as applicable federal and state law and regulations.

The City recognizes that minor modifications to plans that are submitted with an application for a Special Use Permit may be necessary to comply with the requirements of the City or to accomplish the construction of the building or structure involved. All modifications must be brought to the attention of the City and City Planner, and the City Planner is required to resubmit any modifications which, in his/her reasonable determination, result in a change in the use that has been approved or that change the impact

of the approved use on the City and its residents. Modifications of that type must be resubmitted to both the Zoning and Planning Commission and to the City Council.

Issued this April 25, 2022 by a vote of 6 in favor and 0 against.

The City of Ladue

By: Nancy Spewak  
Nancy Spewak, Mayor

Attest: Angy Mann